



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

AUGUST 4, 1995

Honorable Barbara S. Nielsen
Superintendent of Education
South Carolina Department of Education
504 Rutledge Building
1429 Senate Street
Columbia, South Carolina 29201

Dear Superintendent Nielsen:

During the week of March 27, 1995, the Office of Special Education Programs (OSEP), United States Department of Education, conducted an on-site review of the South Carolina Department of Education's (SCDE) implementation of Part B of the Individuals with Disabilities Education Act (Part B). The purpose of the review was to determine whether SCDE is meeting its responsibility to ensure that its educational programs for children with disabilities are administered in a manner consistent with the requirements of Part B. Enclosure A to this letter describes OSEP's monitoring methodology; our findings are in Enclosure B.

Our monitoring revealed that the SCDE has a number of problems in the provision of related services and extended school year services, timeliness of preplacement evaluations, provision of services in the least restrictive environment, and provision of services to eligible individuals in adult correctional facilities. In addition, we found problems in SCDE's complaint management system, in the content of required notices to parents, and in the timeliness of state level review hearings.

On the other hand, our review revealed that the actions SCDE took in response to OSEP's prior monitoring report of February 1992, seem to have been effective in resolving a number of the problems identified in that report. We found no deficiencies in the areas of content of individualized education programs (IEPs), full explanation of procedural safeguards in notices to parents, and

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protection in evaluation procedures -- all areas where SCDE took corrective action after our 1992 report.

We also saw some noteworthy SCDE initiatives for providing special education services to students with disabilities. SCDE's Educational Associates (full-time employees of SCDE) have provided extensive statewide training and technical assistance to

local educational agency (LEA) administrative, instructional and support staff in state identified priority areas such as provision of services in the least restrictive environment. These services have helped to create a positive collegial relationship between SCDE and LEA staff for improving services to children with disabilities. SCDE's Educational Associates also have been effective in assisting LEAs to access services and obtain human resources that often are difficult to obtain, such as orientation and mobility specialists.

The findings presented in Enclosure B are final. The preliminary findings of the monitoring team were discussed with Dr. Ora Spann and staff members of the Special Education Section at an exit conference held at the conclusion of OSEP's on-site visit. At that time SCDE was invited to provide any additional information it wanted OSEP to consider during the development of OSEP's monitoring report. No additional information was submitted.

In the interest of developing a mutually agreeable corrective action plan (CAP) specifically designed to address these findings, OSEP proposes that SCDE representatives discuss with OSEP staff, either in a meeting or telephone conference, the areas of noncompliance identified, the most effective methods for bringing about compliance and improving programs for children with disabilities in the State, and specific corrective actions.

We also will invite a representative from South Carolina's Special Education Advisory Council to participate in that discussion.

SCDE's CAP must be developed within 45 days of receipt of this letter. Should we fail to reach agreement within this 45 day period, OSEP will be obliged to develop the CAP.

In the event SCDE, after consideration of the data in this letter and its enclosures, concludes that evidence of noncompliance is significantly inaccurate and that one or more findings is incorrect, SCDE may request reconsideration of the finding. In such a case, SCDE must submit reasons for its reconsideration request and any supporting documentation within 15 days of receiving this letter. OSEP will review the request and, where

appropriate, will issue a letter of response informing SCDE that the finding has been revised or withdrawn. Requests for reconsideration of a finding will not delay CAP development and implementation timelines for findings not part of the reconsideration request.

I thank you for the assistance and cooperation provided during our review. Throughout the course of the monitoring process, Dr. Ora Spann, Lois Stephenson and staff members of the Special Education Section were responsive to OSEP's requests for information, and provided access to necessary documentation that enabled OSEP staff to acquire an understanding of South Carolina's various systems to implement Part B.

Members of OSEP's staff are available to provide technical assistance during any phase of the development and implementation of SCDE's corrective actions. Please let me know if we can be of assistance. Thank you for your continued efforts toward the goal of improving education programs for children and youth with disabilities in South Carolina.

Sincerely,

Thomas Hehir
Director
Office of Special Education
Programs

Enclosures

cc: Dr. Ora Spann

ENCLOSURE A

OSEP's Monitoring Methodology

Pre-site Preparation. OSEP staff began its review of documents related to SCDE's special education program in February 1995. The review included, but was not limited to, SCDE's State Plan, State regulations, interagency agreements and other materials that must comply with the requirements of Part B, such as the complaint management, due process hearings, and State monitoring systems. OSEP also reviewed SCDE's placement data based on the December 1993 child count.

Involvement of Parents and Advocates During the week of February 21, 1995, OSEP held three public meetings in Columbia (ETV link with Charleston and Beaufort), Florence, and Greenville. The purpose of these public meetings was to solicit comments from parents, advocacy groups, teachers, administrators and other interested citizens regarding their perceptions of SCDE's compliance with Part B and EDGAR. In addition, OSEP conducted outreach meetings with representatives from the State Advisory Panel and the Parent Training Information center to receive additional information. The information obtained from the public meetings and outreach activities, as well as from interviews with State officials and a review of State documents assisted OSEP in: (1) selecting the sites to be monitored; (2) selecting monitoring issues (e.g., the provision of related services) to be emphasized while on-site; and (3) identifying the issues faced by consumers and others interested in special education in South Carolina.

During the on-site visit, OSEP conducted one parent focus group meeting in the Anderson School District 5 in order to hear parents' impressions of special education services provided to their children. This meeting provided OSEP staff with parent views of the methods used by the agency in providing a free appropriate public education to their children as well as the challenges faced by the district in this endeavor.

On-site Data Collection and Findings The OSEP team included Delores Barber, Nell Eano, Doug Little and Larry Wexler, who visited three elementary schools, two intermediate schools, two high schools, two preschool programs, and one special school in eight public agencies. Where appropriate, OSEP has included in this Letter data collected from those agencies to support or clarify the OSEP findings regarding the sufficiency and effectiveness of SCDE's systems for ensuring compliance with the requirements of Part B. The agency in which the supporting or clarifying data were collected is indicated by a designation such as "Agency A." The agencies that OSEP visited and the designation used to identify those agencies in Enclosure B of this Letter are set forth below:

Agency A: Pickens
Agency B: Anderson 5
Agency C: Aiken
Agency D: Orangeburg 4
Agency E: Florence 1
Agency F: Sumter 17
Agency G: Richland 1
Agency H: Department of Juvenile Justice
Agency I: Department of Corrections

In addition to the team visits to local school systems, the OSEP Team Leader, Carolyn Smith, conducted interviews with staff from the Departments of Juvenile Justice and Corrections and reviewed students' records from those agencies. SCDE staff were also interviewed and compliance documents reviewed, as appropriate, to verify SCDE's compliance with Part B.

ENCLOSURE B

FINDINGS AND EXPECTED RESULTS/ACTION REQUIRED

FEDERAL REQUIREMENT	OSEP FINDING	EXPECTED RESULTS/ACTION REQUIRED	TIMELINES	ACTIVITIES TO ACHIEVE RESULTS/RESOURCES
<p>FREE APPROPRIATE PUBLIC EDUCATION (FAPE): RELATED SERVICES §§300.300, 300.8(d), 300.16, and 300.350 [FAPE must be made available to all children with disabilities. SCDE must ensure that each student with a disability receives the kind and amount of related services that are required to assist the student to benefit from special education.]</p>	<p><u>Related Services</u></p> <p>SCDE has not fully ensured that public agencies provide special education and related services based on the student's unique needs and as specified by an IEP.</p> <p>Although SCDE's monitoring procedures require that monitors verify through interview with teachers, related services providers, and parents that the related services specified in the student's IEP are being provided, OSEP found this process ineffective. Monitoring documents maintained by SCDE showed that interviews with teachers and related services providers, as required by SCDE's monitoring procedures, were not always conducted by SCDE monitoring staff to confirm that related services are provided based on the student's IEP.</p> <p>Administrators, teachers, and related service providers from all agencies visited stated that mental health services, such as psychological counseling, are not determined based on the student's individual needs, nor provided based on an IEP. Agency personnel in all agencies stated that if a student, in order to receive FAPE, requires more comprehensive counseling than is available through a school counselor at the school, the parent and student are referred to community mental health agencies for community based psychological services. The administrators and teachers reported that the student's IEP does not reflect the need for these services and is not revised once the services are obtained. Personnel in all agencies further reported that there is a waiting list for contracted mental health services. However, interviewed personnel also reported that, consistent with current practice, students will be scheduled to receive compensatory counseling services after school, to the extent that is appropriate.</p>	<p>Students with disabilities will be provided related services, such as psychological counseling, commensurate with their unique needs as specified by an IEP.</p>		

<p>FREE APPROPRIATE PUBLIC EDUCATION: EXTENDED SCHOOL YEAR (ESY) SERVICES \$300.300 [SCDE is responsible for ensuring that all children with disabilities are provided FAPE including ensuring that public agencies consider and make available ESY services, as a component of FAPE, to students with disabilities, if necessary, to ensure that the student receives FAPE.]</p>	<p><u>Extended School Year (ESY) Services</u></p> <p>SCDE has not fully ensured that public agencies consider and make available ESY services, as a component of FAPE, to students with disabilities, if necessary, to ensure that the student receives FAPE.</p> <p>SCDE provided guidance in a document dated May 10, 1993 and training to public agencies regarding procedures that must be followed to consider the need for ESY services. In order to ensure that agencies consider ESY when needed as a component of FAPE, SCDE's guidance to public agencies included a form entitled "Extended School Year Eligibility" and instructions that this document is completed when the consideration for ESY is made. Additional instructions stated that if it was determined that ESY be provided as a component of FAPE, an addendum to the IEP must be completed. SCDE's monitoring procedures require that agency policies and procedures for ESY are verified, student records are reviewed, and interviews conducted to determine whether ESY is considered as a need, and whether an addendum to the IEP is available in the student's records for those services. SCDE monitors reported that they have not verified that the ESY eligibility form is completed to confirm that agencies have considered the need for ESY services. Forty three of 65 student records reviewed in all public agencies visited by OSEP did not contain the form required.</p> <p>In interviews with administrators, teachers, and related service providers who serve on the IEP teams in agencies A, B, C, and D, it was reported that ESY services are only available for certain types of special education or for related services. For example, the agency B administrator reported that ESY services were considered only for special education instruction, while the agency A administrator indicated that ESY was considered only for related services, such as speech.</p>	<p>Students with disabilities receive ESY services, if necessary, to ensure that the student receives FAPE.</p>		
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<p>FREE APPROPRIATE PUBLIC EDUCATION: PREPLACEMENT EVALUATION §§300.300, 300.8(b), and 300.600(a)(2)(ii). [SCDE is responsible for ensuring that all children with disabilities are provided FAPE that meets the standards of the SEA, which require public agencies to conduct a full and individual evaluation within 45 days of the parents' consent to evaluate for eligibility for special education services.]</p>	<p><u>Preplacement Evaluation</u></p> <p>SCDE has not fully ensured that all children with disabilities are provided FAPE that meets the standards of the SEA, which require public agencies to conduct a full and individual evaluation within 45 days of the parents' consent to evaluate for eligibility for special education services.</p> <p>SCDE's monitoring procedures provide for verification that agency policies and procedures include the State's standard requiring that initial evaluations be conducted within 45 days from receipt of the parent's consent. These procedures have not effectively ensured that evaluations are conducted in a timely manner. SCDE's monitors reported that the student's record is reviewed to verify referral, parental consent, a completed evaluation, and the conduct of an IEP meeting, but indicated that no determination is made as to whether the initial evaluation was conducted within the established timeline.</p> <p>OSEP reviewed the documentation on initial evaluations submitted by public agencies visited and interviewed staff in agencies visited. Documentation for agencies B and C showed delays in evaluation for as much as 120 days beyond the 45 day timeline. The administrator from agency B provided documentation on evaluations completed during the 1993 and 1994 school year. This documentation showed that the agency had completed 144 evaluations, of which 44 exceeded the 45-day timeline. The administrator from agency C provided information regarding referrals for initial evaluations. An analysis of a random sample of 322 of 1400 referrals for initial evaluations from August, 1993 through December, 1994 resulted in the identification of 178 (55%) initial evaluations that exceeded the 45-day timeline. These administrators reported that given the small numbers of available personnel, the timeline under which they are operating is not sufficient to complete the evaluation, conduct the IEP meeting, and make a placement decision.</p>	<p>Students suspected of having disabilities will have a full and individual evaluation completed within 45 days of the parents' consent to evaluate for eligibility for special education services.</p>		
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<p>GENERAL SUPERVISION ¹ §300.600(a)(2)(ii) [SCDE is responsible for ensuring that each educational program for children with disabilities administered within the State, including each program administered by any other public agency meets the requirements of Part B and the education standards of the SEA. See also §300.2(b)(4).]</p>	<p>OSEP finds that SCDE did not exercise its general supervisory responsibility in a manner that ensured that all individuals with disabilities, including those who are incarcerated, are identified, located and evaluated, and if found eligible, provided FAPE. OSEP interviewed SCDE and Department of Corrections (DOC) administrators who verified that there was no system for identifying, and if determined eligible, providing special education and related services to inmates 21 years of age or younger at adult correctional facilities in the State. DOC facilities have adult basic education courses available, but because of staff shortages, no specific special education services are available to address the individual needs of eligible inmates at this time.</p>	<p>SCDE will ensure that eligible inmates at adult correctional facilities in the State who are 21 years of age or younger are identified and, if found eligible, provided special education and related services.</p>		
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¹ OSEP is aware of ongoing litigation relative to the provision of FAPE in programs operated by the Department of Juvenile Justice. In a recent ruling in Alexander S. et al. v. Boyd et al., United States District Court Judge Joseph Anderson Jr. found, among other deficiencies, that the Department of Juvenile Justice was not providing FAPE to youth with disabilities in its facilities. 22 IDELR 139. The Judge ordered the State to prepare a remedial plan to correct all deficiencies found and appointed a monitor to oversee implementation of the plan. Therefore, there is no finding or corresponding corrective action regarding the State's responsibility to ensure the provision of FAPE to students in facilities operated by the Department of Juvenile Justice.

<p>LEAST RESTRICTIVE ENVIRONMENT SS\$300.550(b) [SCDE is responsible for ensuring that, to the maximum extent appropriate, children with disabilities, including students in public or private institutions or other care facilities are educated with children who are not disabled, and that special classes, separate schooling, or other removal from the regular educational environment occurs only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily]</p>	<p>As a result of the corrective action process initiated following OSEP's 1991 on-site review and Report, and the efforts of the Office for Civil Rights (OCR), SCDE has escalated its review of agencies' LRE policies and practices, and has reduced the number of students enrolled in restrictive environments (e.g., special schools). LRE training conducted by SCDE, in collaboration with OCR, has provided guidance to administrators and teaching staff on factors that must be considered prior to the removal of a student with a disability from the regular education environment. SCDE has established a LRE worksheet that must be completed for all students with disabilities to document the process applied to determine the need to remove the student from the regular education classroom. SCDE uses this document as the basis for review of the placement decision when it monitors its public agencies.</p> <p>OSEP determined from the review of 65 student records and interviews with administrators and teachers responsible for making placement decisions in agencies A, C, D, E, F, and G that each student's placement is not consistently determined based on the student's abilities and needs, but rather on the severity of the disability or administrative convenience. OSEP reviewed the LRE worksheets for the student records to determine if agencies consistently implemented the decision making process as stipulated by the State's LRE guidance. In those LRE worksheets completed for students enrolled in self-contained classes and separate programs OSEP found removal statements that were indicative of removal based on the severity of the disability. IEPs of students' records reviewed in agencies D, E, and F included statements such as "the nature and severity of this handicap requires self-contained placement". Administrators in agencies C and G told OSEP monitors that there are students who would benefit from a placement in a regular education setting, but agencies are not prepared to receive students at this time. Administrators in agencies C and G reported on plans to restructure the district's educational programs to accommodate the placement of self-contained classes in regular education buildings, and on plans to transition students to less restrictive environments during the next school year. These administrators reported, however, that the implementation of these plans is dependent upon the readiness of the receiving school staff and other agency resources.</p>	<p>To the maximum extent appropriate, children with disabilities, including students in public or private institutions or other care facilities are educated with children who are not disabled, and that special classes, separate schooling, or other removal from the regular educational environment occurs only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aides and services cannot be achieved satisfactorily</p>		
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<p>§300.553 (Nonacademic settings) [SCDE is responsible for ensuring that in providing or arranging for the provision of nonacademic and extracurricular activities and services, each public agency ensures that students with disabilities participate with nondisabled children in those activities and services to the maximum extent appropriate to the needs of the child]</p>	<p>OSEP determined in interviews with administrators in agencies C and G that the participation of students with disabilities with nondisabled peers in nonacademic and extracurricular activities was not determined on an individual basis. The administrator in agency G reported efforts on the part of the agency to involve disabled students in nonacademic and extracurricular group activities at neighboring regular education schools. However, participation was not based on the individual needs of students, but on the activities (e.g., assemblies) being available to the entire class of special education students as a group activity. The administrator in agency C stated that participation in nonacademic and extracurricular activities is not occurring for most of the students enrolled in the Agency C separate facility, even though these students could benefit from participation in nonacademic and extracurricular activities with nondisabled peers.</p>	<p>SCDE will ensure that in providing or arranging for the provision of nonacademic and extracurricular activities and services, each public agency ensures that students with a disabilities participate with nondisabled children in those activities and services to the maximum extent appropriate to the needs of the child.</p>		
<p>COMPLAINT MANAGEMENT SYSTEM §300.661(a)(2) [SCDE is responsible for ensuring that the complainant has an opportunity to submit additional information either orally or in writing about the allegations in the complaint.]</p>	<p>SCDE's procedures for and implementation of complaint investigations do not include the provision of §300.661(a)(2), which gives the complainant an opportunity to submit additional information either orally or in writing about the allegations in the complaint. SCDE staff responsible for the complaint management system indicated that the complainant has an opportunity to submit additional information when he seeks Secretarial review.</p>	<p>SCDE will ensure that the complainant has an opportunity to submit additional information either orally or in writing about the allegations in the complaint.</p>		

<p>PROCEDURAL SAFEGUARDS: §300.505(a)(2) [SCDE is responsible for ensuring that public agencies provide notice to parents under §300.504 that includes a description of the action proposed or refused by the agency, an explanation of why the agency proposes or refuses to take the action, and a description of any options the agency considered and the reasons why those options were rejected a reasonable time before the public agency proposes or refuses to initiate or change the educational placement of the child.]</p>	<p>Under §300.504, public agencies are required to provide written notice to parents that includes the content of §300.505(a)(2) a reasonable time before the public agency proposes or refuses to initiate or change the educational placement of the child. OSEP confirmed through a review of student records and interviews with teachers and administrators responsible for supervising the provision of special education in all agencies visited that all public agencies in South Carolina use the notice of the IEP meeting form, developed by SCDE, to provide notice for initial placement. When OSEP reviewed the notice of the IEP meeting form it determined that the form included a description of the student's eligibility, the evaluation data used to support the eligibility determination and the procedural safeguards specified at §300.505(a)(1) but lacked a description of the action proposed or refused by the agency, an explanation of why the agency proposes or refuses to take the action, and a description of any options the agency considered and the reasons why those options were rejected.</p> <p>From student records reviewed and interviews with teachers and administrators responsible for supervising the provision of special education in all agencies visited, OSEP determined that, a reasonable time before the public agency proposes an initial placement, agencies were not providing notice that included a description of the action proposed or refused by the agency, an explanation of why the agency proposes or refuses to take the action, and a description of any options the agency considered and the reasons why those options were rejected.</p>	<p>A reasonable time before the public agency proposes an initial placement, parents will be provided notice under §300.504 that includes a description of the action proposed or refused by the agency, an explanation of why the agency proposes or refuses to take the action, and a description of any options the agency considered and the reasons why those options were rejected.</p>		
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<p>PROCEDURAL SAFEGUARDS: §300.512(b) [SCDE is responsible for ensuring that not later than 30 days from the receipt of a request for a state level review, a final decision is reached and a copy is mailed to each of the parties, unless a specific time extension requested by either party is granted.</p>	<p>SCDE operates a two tier due process hearing system. Within 45 days after the school receives a request or initiates a due process hearing, a final decision must be reached and the parties notified. SCDE requires that parties wishing to appeal the hearing officer's decision must submit that request for appeal to the State within 10 calendar days of receiving the notice of the decision. The State level hearing officer has authority to grant a request for a specific extension of time in which to file a request for a State level administrative review. A final decision must be reached and a copy of the decision mailed to each of the parties within 30 days of the request for a state level review.</p> <p>OSEP found that State level administrative reviews continue to exceed the 30 day timeline required at §300.512(b). While the numbers of state level reviews are low, SCDE has not ensured that the review is completed within the 30 days. Of five requests received for state level review, all five exceeded the 30 day timeline. There was no documentation that a specific time extension had been granted by the review officer at the request of either party. The state official responsible for state level reviews indicated that the timeline was insufficient to review the documentation and request any additional documentation to complete the review. The failure to adhere to the 30-day timeline was also cited in OSEP's February 1992 monitoring report.</p>	<p>SCDE will demonstrate that it has in place a state level review system with adequate resources to ensure that final decisions that are reached and mailed within 30 days from a request for a review unless a specific time extension requested by either party is granted.</p>		
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General Corrective Actions

In order to ensure immediate correction of deficient practices SCDE must undertake the following general corrective actions:

1. SCDE must issue a memorandum to all agencies advising them of OSEP's findings of deficiency. The memorandum must direct agencies to review their respective practices in regard to each of the deficiencies identified by OSEP in order to determine if they have proceeded in a manner similar to the agencies for which OSEP found deficiencies. Should these agencies determine that their current practice is inconsistent with the requirements identified in SCDE's memorandum, they must discontinue the current practice and implement the correct procedure. This memorandum must be submitted to OSEP within thirty days of the issuance of this Letter. Within 15 days of OSEP's approval of the memorandum, it must be issued to all agencies throughout the State providing special education or related services to students with a disability.

2. SCDE must issue a memorandum to those agencies in which OSEP found deficient practices, as identified in this Letter, requiring those agencies to immediately discontinue the deficient practice(s) and submit documentation to SCDE that the changes necessary to comply with Part B requirements have been implemented. This memorandum must be submitted to OSEP within thirty days of the issuance of the this Letter. Within 15 days of OSEP's approval of the memorandum, it must be issued to those public agencies in which OSEP found deficient practices. SCDE must send to OSEP verification that all corrective actions have been completed by these public agencies.